

Document No. 281  
Adopted at Meeting of 9 / 6 /63

COOPERATION AGREEMENT

by and between  
BOSTON REDEVELOPMENT AUTHORITY  
and  
METROPOLITAN TRANSIT AUTHORITY

PROJECT NO. MASS. R-35

GOVERNMENT CENTER

DRAFT - JULY 24, 1963



THIS AGREEMENT made and entered into as of the                      day of                      , 1963 by and between BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the provisions of Chapter 121 of the Massachusetts General Laws (Ter. Ed.), as amended, (hereinafter called "BRA"), and METROPOLITAN TRANSIT AUTHORITY, a public body politic and corporate organized under the provisions of Chapter 544 of the Massachusetts Acts of 1947, as amended (hereinafter called "MTA").

WITNESSETH THAT:

WHEREAS, BRA is presently undertaking in the City of Boston an Urban Renewal Project known as the Government Center Project (hereinafter called "the Project"); and

WHEREAS, said Project is being carried out with financial assistance from the Housing and Home Finance Agency of the Federal Government under Title I of the Housing Act of 1949, as amended; and

WHEREAS, as part of said Project, certain existing streets will be discontinued and abandoned and new streets will be laid out; and

WHEREAS, as a result of said changes in street patterns, certain MTA facilities in and under said streets will have to be moved, strengthened, or relocated; and

WHEREAS, pursuant to Chapter 121 of the General Laws of Massachusetts, and Title I of the Housing Act of 1949, as amended, the BRA is authorized to reimburse the MTA for such work as constitutes removal or relocation work within the meaning of Section 26V of said Chapter 121, or site improvement work within the meaning of Section 110(c) of said Title I:

NOW THEREFORE, the parties hereto do mutually agree as follows:



1. The work to be performed pursuant to this Agreement consists of the preparation of detailed plans and specifications and estimates of cost for, and the carrying out of the following, all in accordance with the terms of this Agreement:
  - a. Strengthening and waterproofing of the roof of the Washington Street Tunnel between Hanover Street and Haymarket Square, as and if necessary to accommodate embankment and roadway loading due to expected traffic on New Congress Street, or construction on Parcel 7 in the Government Center Project Area. If requested by BRA, this work shall include backfill to existing street level.
  - b. Relocation of portions of the Friend-Union Station of the Washington Street Tunnel, as necessitated by construction of New Congress Street and redevelopment of Parcel 7 in the Government Center Project Area, to be performed in three parts as follows:
    - (1) Abandonment and demolition of Station entrance on Washington Street; related changes in Station and Tunnel.
    - (2) Construction of new entrance.
    - (3) Abandonment and demolition of Station entrance on Union Street.
  - c. Relocation of an MTA grating, now located in Hanover Street into a new location to be agreed upon between BRA and MTA.
  - d. Relocation of portions of the Haymarket Square Station of the Tremont Street Subway, and related changes in Tunnel, as necessary to conform to redevelopment of Parcel 4 in the Government Center Project Area.
  - e. Other changes in MTA facilities necessitated by Project activities in the Government Center Project Area.



2. MTA shall as soon as possible after execution of this Agreement (unless BRA shall have made a contrary request of MTA) employ an engineering firm to prepare full and complete detailed plans and specifications for the work described in subsections a, b(1), and c of paragraph 1 hereof, (hereinafter called "immediate work") together with detailed estimates of the costs thereof. The engineering firm shall also prepare an estimate of the costs of the work described in subsections b(2), b(3), and d of paragraph 1 hereof, (hereinafter called "future work") on the basis of materials to be supplied MTA by BRA. The contract of employment of such engineering firm shall be in the form annexed hereto, made a part hereof, and marked "A", and upon execution of such contract MTA shall forthwith deliver to BRA at least three certified copies thereof. Upon request by BRA, MTA shall forthwith give notice of termination of such contract in accordance with the terms thereof, and in the event of MTA's delay in giving or failure or refusal to give such notice of termination, no cost or expense on account of such contract which would not have been incurred on account of such contract if such termination notice had been given shall be reimbursed by BRA pursuant to paragraph 14 hereof.
3. From time to time during preparation of such detailed plans and specifications and estimates of cost, MTA and said engineering firm will consult with BRA. The full and complete set of detailed plans and specifications, together with the estimates of costs shall be submitted to BRA at least thirty (30) working days prior to final acceptance thereof by MTA. Any requests, recommendations or suggestions with respect to such plans and specifications made by BRA at any time prior to final acceptance thereof by MTA shall be carefully



considered and weighed together with other considerations. At least three certified full and complete sets of the detailed plans and specifications in the form accepted by MTA and the estimates of cost shall be furnished to BRA.

4. a. As soon as possible after the acceptance of detailed plans and specifications by MTA, MTA shall confer with BRA with respect to the carrying out of the immediate work in accordance with such detailed plans and specifications, by the selection and employment of a responsible contractor or contractors and also with respect to the terms and conditions of each such employment (including the compensation to be paid for each phase of the work). At least fifteen (15) working days before the date on which MTA proposes to employ any such contractor or to enter into any contract for any such employment, MTA shall submit to BRA for consideration the terms and conditions of such employment (including the form of any such contract).
- b. Any change in any term or condition of any employment or contract referred to in paragraph 4a hereof (including any order for extra work pursuant to any such contract) shall be submitted to BRA not less than ten (10) working days before such change is to become effective. If for any reason such change is not submitted as aforesaid, it shall be submitted to BRA for consideration as early as practicable and shall be subject to disapproval by BRA at any time prior to final settlement pursuant to this Agreement if such change is not essential to the work to be performed pursuant to this contract or if such change



contravenes federal, state or local law, or applicable regulations pursuant thereto; provided, however, that any change which when made reasonably appeared to the Chief Engineer of MTA necessary to be made immediately for safety or structural strength shall be deemed essential.

c. Employment of all contractors shall be by written contract, acceptable to the BRA.

d. At least three certified copies of any such contract in the form executed and of any such change in the form effective shall be furnished to BRA.

5. Upon request by BRA prior to the execution of any contract or taking effect of any employment or change referred to in subparagraph 4a or 4b hereof, or in paragraph 7 hereof, MTA shall delay such execution or taking effect until further notice by BRA, and in the event of MTA's failure or refusal to delay such execution or taking effect no cost or expense on account of such contract or employment or change which would not have been incurred on account thereof if such execution or taking effect had been delayed shall be reimbursed by BRA pursuant to paragraph 14 hereof. In the event that BRA, at any time prior to the execution by MTA of a contract or contracts for the work to be performed hereunder, or any part thereof (notwithstanding the execution of any contract or contracts for surveys, test borings, or other preliminary work), shall in its discretion, determine that it no longer deems the work or part thereof desirable for the Project, it may give written notice to that effect to MTA. MTA shall not be obligated after receipt of such notice to proceed any further with such work or part thereof, and BRA shall



in no way be obligated to reimburse MTA for any further cost or expense except the costs and expenses due for work that may be properly performed pursuant to a contract which contract was duly executed prior to such notice or such lesser amount as MTA may be required to expend to obtain a discharge of its obligations pursuant to such contract.

6. a. MTA shall consult with BRA as to the appropriate time to commence and complete each phase of the immediate work to be performed. Unless otherwise agreed by the parties, such work, or any phase thereof, shall be commenced promptly upon approval by BRA of detailed plans and specifications therefor, and shall be diligently prosecuted to completion.
- b. However, if MTA be delayed at any time or times in the performance of its obligations hereunder due to any act or neglect of BRA (including any request or notice pursuant to paragraph 5 hereof or any delay by BRA in granting property interests duly requested pursuant to paragraph 8a hereof or in performing work for which BRA is responsible pursuant to paragraph 8b hereof) or due to any other unforeseeable cause beyond its control and without its fault or negligence (including acts of God or of the public enemy or of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, force majeure or delay of contractors or subcontractors due to such causes), then the times for performance hereunder shall be extended accordingly for such period or periods as shall be reasonable in all the circumstances; provided that MTA shall, within ten (10) days after the beginning of such delay, have given BRA notice in writing



of such delay and of the cause or causes thereof.

7. a. With respect to the future work described in subsections b(2), b(3), and d, of paragraph 1 hereof, MTA and BRA shall consult with respect to the most efficient and desirable method of accomplishing same and shall, as soon as possible after execution of this Agreement, mutually agree as to which part thereof shall be undertaken by MTA and which, if any part, shall be undertaken as part of the redevelopment of Parcel 4 or Parcel 7 in the Government Center Project Area. With respect to any such parts thereof which as a result of such consultations, it is mutually agreed shall be undertaken by MTA, MTA shall promptly engage an engineering firm to prepare detailed plans, specifications, and detailed estimates of cost in connection therewith, subject to BRA approval of the terms and conditions thereof and all the provisions of paragraphs 2 and 3 hereof, to the extent appropriate shall apply to such parts as are so to be undertaken. Following approval by BRA of such detailed plans, specifications, and detailed estimates of cost, MTA shall consult with BRA as to the appropriate time to commence and complete each part of the work so to be undertaken, and all the provisions of paragraphs 4, 5, and 6(b) hereof to the extent appropriate shall apply. Such work as relates to relocation of portions of the Haymarket Square Station of the Tremont Street Subway shall be coordinated with redevelopment activities in Parcel 4 of the Government Center Project, and such work as relates to relocation of portions of the Friend-Union Station of the Washington Street Tunnel



shall be coordinated with redevelopment activities in Parcel 7 of the Government Center Project, all to the end that the work required shall be completed at approximately the same time as construction is completed on Parcel 4 or Parcel 7 as the case may be.

If, as a result of such consultations, it is mutually agreed that any part of such work shall be undertaken as part of the redevelopment of Parcel 4 or Parcel 7 in the Government Center Project Area, MTA shall cooperate with BRA and the redeveloper or redevelopers selected by BRA and shall, if requested by BRA, engage an engineering firm to prepare detailed plans, specifications, and detailed estimates of cost in connection therewith, and all the provisions of paragraphs 2 and 3, to the extent appropriate, shall apply to such part.

- b. With respect to the work described in subsection e of paragraph 1 hereof, MTA shall consult with BRA with respect to such other changes in MTA facilities as are necessitated by project activities. Upon request by the BRA, MTA shall make such studies as are required and hire engineering firms to prepare detailed plans, specifications, and estimates of cost of such changes, subject to BRA approval of the terms and conditions thereof and, upon approval by BRA of such plans, specifications and estimates of cost, shall carry out such changes, all in accordance with the provisions of this Agreement, as appropriate.

- 8. a. BRA shall, upon written request by MTA, from time to time grant to MTA, by appropriate instruments, such temporary or permanent underground and/or surface



easements or other interests in property in the Project Area (to the extent such property is, at the time of such request, owned by BRA and cleared or otherwise amenable to MTA's proposed use thereof) as may be reasonably required for the performance of the work hereunder. MTA agrees for itself, its successors and assigns, that any easements or other interests in property in the Project Area granted to MTA shall be devoted to and only to the uses for which the same shall have been granted, and the use thereof shall not be restricted or affected in any manner upon the basis of race, religion, creed, color, or national origin or ancestry; the covenants contained in the foregoing clause of this sentence shall run with the land and shall be contained in substance in any instrument granting such easements or other interests.

- b. BRA shall be responsible for the demolition to the level of the surface of the surrounding ground of buildings and structures in the Project Area (except for structures owned by MTA), but BRA makes and will make no representation or warranty with respect to the condition of any of the land, subsurface conditions or the suitability of any of the land for any particular purpose. BRA shall give due consideration to the needs of MTA (insofar as known to BRA) in BRA's execution of its plans and programs for the Project Area so as not to impede the work hereunder and so as to facilitate the fulfillment of the time schedules contemplated by paragraphs 6 and 7 hereof.



9. a. MTA shall make every reasonable effort to avoid any interference with BRA's plans and programs for the Project Area (including BRA's relocation of residents and business concerns and demolition and removal of structures) and to minimize any interruption or reduction in the permitted use of Haymarket Square, Washington Street, Hanover Street, Union Street, and other streets in the Project Area by surface vehicular traffic during the progress of the work hereunder. MTA shall also actively cooperate with utility companies and the appropriate departments of the City of Boston with respect to any interruption or reduction in usability of any street or any interruption or impairment of utilities or City facilities or services by or in connection with the work hereunder and with BRA with respect to coordination of the work hereunder with redevelopment and construction activities in Parcels 4 and 7 of the Project Area.
- b. BRA shall, and shall bind any relevant contractor or redeveloper to, (1) proceed subject to paragraph 7 hereof, so as not to damage, threaten damage to, impair the support of, or interfere in any way with the use of the Tremont Street Subway or the Washington Street Tunnel and (2) for this purpose actively cooperate with MTA with respect to any work above or adjacent to said tunnels. Should any leakage occur as a result of BRA project activities, the MTA shall take whatever corrective measures are reasonably necessary, and to the extent such leakage would not have occurred except for such project activities, the cost of such corrective work shall be reimbursed to MTA by BRA pursuant to Section 14 hereof.



- c. Except with MTA approval, BRA shall do nothing to interfere with the operation and use of the Friend-Union Station or the Haymarket Square Station (except such portions as are to be abandoned by MTA pursuant to this agreement) until such abandonment is effected.
10. a. MTA shall, from time to time and at least as often as monthly, make written reports to BRA concerning the progress and status of the work.
- b. All work hereunder, and the records and accounts of MTA with respect to costs and expenses in connection therewith, shall be subject to inspection at any and all reasonable times by representatives of BRA, the City of Boston, and the United States of America. All such records and accounts shall be kept and preserved and shall be at any and all reasonable times available for copying and/or audit by such representatives.
11. a. All applicable laws, ordinances, codes, and regulations shall be complied with at all times in the course of work hereunder, and MTA shall cause appropriate safety precautions to be observed and safety measures to be taken during the course of such work.
- b. MTA shall make, or cause to be made, prompt payment of all money due and owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to MTA or any of its contractors or subcontractors in connection with any work hereunder. MTA shall further indemnify BRA and hold it harmless from any and all loss, expense, damages or claim for damages (except any such



loss, expense, damages, or claim for damages caused by negligence or fault of BRA or any of its contractors or subcontractors) which arises out of any work hereunder or any injury (including death) of any person or persons or any damage to property (except such injury or damage caused by negligence or fault of BRA or any of its contractors or subcontractors) which (1) occurs on any property used exclusively by MTA or any of its contractors or subcontractors or (2) is caused by negligence or fault of MTA or any of its contractors or subcontractors in the performance of any work hereunder.

- c. Notwithstanding any other provision herein contained, it is the intent of this Agreement that all plans to be prepared and all work to be done shall be prepared and done to the mutual satisfaction of both parties and with due regard for the needs and requirements of such. Without limitation on the foregoing, it is understood that BRA has a special interest in the design and appearance of any structures to be constructed at or above ground level. All such structures shall be designed and constructed so as to be architecturally and aesthetically acceptable to BRA.

12. As soon as operable substitute MTA facilities, either temporary or permanent, are available and may lawfully be used by MTA, MTA shall abandon such portions of the Friend-Union Station or the Haymarket Square Station (in a condition satisfactory to the BRA) as are to be abandoned pursuant to this agreement. Upon such abandonment MTA shall forthwith transfer and release to BRA all of its right, title, and interest in such portions of the Friend-Union Station or the Haymarket Square Station as are involved in such abandonment.



13. a. Anything in this Agreement to the contrary notwithstanding, it is hereby understood that only those costs relating to relocation and removal work within the meaning of Section 26V of Chapter 121, or site improvement work within the meaning of Section 110(c) of Title I of the Housing Act of 1949, as amended, and approved as eligible costs by the Housing and Home Finance Agency, shall be reimbursed to MTA by BRA. The MTA shall not be obligated to enter into any contract for any of the construction or demolition work contemplated hereunder, or to commence or cause to be commenced such work, unless and until BRA shall have advised MTA that provisions for payment substantially as contained in paragraph 14 hereof have received any necessary approval by the Housing and Home Finance Agency. Any delay by MTA caused by BRA's not having so advised MTA shall be deemed for the purpose of paragraph 6 hereof to be due to act or neglect of BRA.
- b. If, in connection with the work under this contract reimbursable under paragraph 13 hereof, MTA desires that BRA reimburse it for MTA employee time and expenses and/or for amounts paid to independent contractors in connection with professional or technical services other than such services pursuant to contracts referred to in paragraph 2 or paragraph 7 hereof, MTA shall submit detailed budgets of such employee time and expenses and such services anticipated and the estimated cost thereof. One such budget, including all such employee time and expenses and such services in connection with planning and design and other preparatory work prior to the



commencement of any construction work hereunder, shall be submitted to BRA not later than thirty (30) days after the date of execution of this Agreement. A second such budget, including all other such employee time and expenses and such services for which MTA desires that BRA reimburse it shall be submitted to BRA prior to the execution of any contract for construction work hereunder. Reimbursement for any employee time or expenses or amounts paid for such services not anticipated by the budgets submitted as aforesaid shall be conclusively deemed to have been waived unless (1) incurred in connection with an unforeseeable and essential change in the work which is not disapproved by BRA pursuant to paragraph 4b hereof, or (2) mutually agreed upon by BRA and MTA. Cost of MTA employee time shall be determined by proration of the salary of employees concerned and of the expense to MTA of pension, Blue Cross-Blue Shield and accident, health and life insurance contributions, workmen's compensation insurance and social security taxes on account of such employees. Except as provided in the foregoing sentence, none of MTA's overhead shall in any event be reimbursed.

14. a. Upon payment by MTA of fees under the engineering contract referred to in paragraph 2 hereof, or under any engineering or other contracts executed pursuant to paragraph 7 or 13b hereof, BRA shall upon requisition by MTA, promptly reimburse MTA for such fees, provided, however, that 15 per cent of the total fee under any such contract shall be withheld by BRA until all work under such contract has been completed.



- b. With respect to construction or demolition work undertaken pursuant to this Agreement or work performed by MTA employees pursuant to paragraph 13b hereof, MTA shall submit monthly requisitions to BRA, specifying in detail the work performed hereunder during the preceding month, and the actual itemized cost thereof; each such requisition shall be accompanied by a certificate of the Chief Engineer of MTA that such requisition is accurate.
  - c. BRA shall on or before the fifteenth day after receipt of each requisition pay to MTA 85 per cent of the amount thereof.
  - d. Within thirty (30) days after the final completion of each phase of construction or demolition work hereunder, BRA shall pay to MTA the balance of all sums required to be paid by BRA to MTA pursuant to this Agreement for such work.
15. It is understood and agreed that the fair value of the property to be transferred by MTA to BRA pursuant to paragraph 12 hereof is equal to the fair value of the real property interests to be transferred by BRA to MTA pursuant to paragraph 8a hereof. Accordingly, no payment to either party shall be made on account of any such transfer.
16. Not less than the respective salaries prevailing in the locality, as determined pursuant to the attached "Determination of Prevailing Salaries of Technical Positions", shall be paid to persons in respective occupations listed therein employed in performance of work under this Agreement, and the MTA agrees to incorporate the provisions of this paragraph in any contract into which it enters for such work. MTA shall furnish BRA with each requisition pursuant to paragraph 14



hereof a certification as to compliance with this paragraph, and a similar certification of contractors with respect to employees engaged in work under this Agreement.

17. There shall be no discrimination against any employee who is employed on any work hereunder, or against any applicant for employment on such work, because of race, religion, color, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
18. No member of the governing body and no other officer, employee, or agent of BRA or MTA who exercises any functions or responsibilities in connection with the carrying out of the Project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.
19. No member of the governing body of the City of Boston, and no other public official of such locality, who exercises any functions or responsibilities in the review or approval of the carrying out of the Project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.
20. No member of or Delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise herefrom.
21. a. MTA shall include or cause to be included in any contract or subcontract covering any professional or technical work hereunder provisions which are in substance the same as the Part II - Terms & Conditions (HHFA Form 621B, a copy of which is annexed hereto, made



a part hereof, and marked "B") and in any contract or subcontract covering construction or demolition work hereunder provisions which are in substance the same as Part II - General Conditions (HHFA Form 673 or 674, a copy of which is annexed hereto, made a part hereof, and marked "C"), "MTA" in each case being substituted for "LPA". In addition, to the extent that MTA claims reimbursement for employee time and expenses pursuant to paragraph 13b hereof, MTA itself shall be bound as the "contractor" in said Form 621B, 673, or 674 (as appropriate).

- b. MTA shall furnish to BRA such affidavits and other documents or forms executed by contractors or subcontractors as may be requested by BRA.
- c. BRA shall be named as one of the obligees of any payment or performance bond furnished to MTA in connection with any work hereunder.

- 22. All contracts for construction or demolition work hereunder, where consideration, including salvage value, is greater than Two Thousand Dollars (\$2,000), shall be let on the basis of competitive bidding meeting HHFA requirements. BRA shall furnish such requirements to MTA.
- 23. Except as otherwise provided herein, any notice, statement, or other communication required or permitted to be given hereunder by either party to the other shall be sufficient if in writing and mailed by certified mail addressed to, or delivered in hand to, the General Manager or the Chief Engineer of MTA or the Development Administrator of BRA (as the case may be), and whenever approval or other action by either party is required or permitted to be given hereunder, it may be given

by the General Manager or the Chief Engineer of MTA or the  
Development Administrator of BRA (as the case may be).

WITNESS the execution hereof as of the day and year  
first above written.

(SEAL)

BOSTON REDEVELOPMENT AUTHORITY

ATTEST: \_\_\_\_\_

By \_\_\_\_\_

(SEAL)

METROPOLITAN TRANSIT AUTHORITY

ATTEST: \_\_\_\_\_

By \_\_\_\_\_



by the General Manager or the Chief Engineer of the  
Development Administration of the (see the case file).

Witness the execution of the day and year  
first above written.

(SEAL) REGIONAL DEVELOPMENT AUTHORITY

ATTEST: \_\_\_\_\_ BY \_\_\_\_\_

(SEAL) REGIONAL TRAVEL AUTHORITY

ATTEST: \_\_\_\_\_ BY \_\_\_\_\_